



DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Liquor Control Ordinance of the Kickapoo Tribe in Kansas

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Kickapoo Tribe in Kansas. The liquor control ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Kansas for the purpose of generating new Tribal revenues. Enactment of this liquor control ordinance will help provide a source of revenue to strengthen Tribal government, provided for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This ordinance shall take effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005, Telephone: (405) 247-1534 or (405) 247-6673, Fax: (405) 247-9240.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior must certify and publish in the *Federal Register* notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Kickapoo Tribe in Kansas Tribal Council duly adopted the Liquor Control Ordinance of the Kickapoo Tribe in Kansas on September 1, 2020.

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Kickapoo Tribe in Kansas

Tribal Council duly adopted by Resolution the Liquor Control Ordinance of the Kickapoo Tribe in Kansas by Resolution No. KT20-111 on September 1, 2020.

Bryan Newland,

Principal Deputy Assistant Secretary, Indian Affairs.

LIQUOR CONTROL ORDINANCE OF THE KICKAPOO TRIBE IN KANSAS

Introduction

Title. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161, by the authority of the Kickapoo Tribe in Kansas Tribal Council under the Constitution and Bylaws of the Kickapoo Tribe in Kansas, Article V, Section 1.

Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor within the Kickapoo Tribe in Kansas Reservation. The enactment of a tribal ordinance governing liquor possession and sale on the Kickapoo Tribe in Kansas Reservation will increase ability of the tribal government to control the sale, distribution and possession of liquor and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Effective date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the Federal Register.

ARTICLE 1. DECLARATION OF PUBLIC POLICY AND PURPOSE

- (1) The introduction, possession, and sale of liquor on the Kickapoo Tribe in Kansas Reservation is a matter of special concern to the Kickapoo Tribe in Kansas.
- (2) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. Sec. 1154 and other statutes), except as provided therein and expressly delegates to the tribes the

decision regarding when and to what extent liquor transactions shall be permitted. (18 U.S.C. Sec. 1161).

(3) The Kickapoo Tribe in Kansas Tribal Council finds that a complete ban on liquor within the Kickapoo Tribe in Kansas Reservation is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within Kickapoo Tribe in Kansas Reservation, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Kickapoo Tribe in Kansas Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Kickapoo Tribe in Kansas Reservation.

(4) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the Kickapoo Tribe in Kansas Reservation and which provides for exclusive purchase, distribution, and sale on liquor only on tribal lands within the exterior boundaries of the Kickapoo Tribe in Kansas. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at a tribally-owned gaming facility complex.

ARTICLE II. DEFINITIONS

(1) As used in the title, the following words shall have the following meaning unless the context clearly requires otherwise:

- (a) “Alcohol” means that substance known as ethyl alcohol, hydrated oxide of ethyl, Alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.
- (b) “Alcoholic Beverage” is synonymous with the term “liquor” as defined in Article II (f) of this Chapter.
- (c) “Bar” means any establishment with special space and accommodations for the Sale of liquor by the glass and for consumption on the premises as herein defined.

- (d) “Beer” means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other whole grain or cereal in pure water and containing the percent of alcohol by volume subject to regulations as an intoxicating beverage in the state where the beverage is located.
- (e) “Tribal Council” means the governing body of the Kickapoo Tribe in Kansas.
- (f) “Liquor” includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whisky, rum, gin aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.
- (g) “Liquor Store” means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.
- (h) “Malt liquor” means beer, strong beer, ale, stout and porter.
- (i) “Package” means any container or receptacle used holding liquor.
- (j) “Public Place” includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls, and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all

other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

- (k) “Sale” and “Sell” include exchange, barter and traffic, and also include the selling or supplying or distributing, by and means whatsoever, or liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.
- (l) “Spirits” means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.
- (m) “Wine” means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, hone, milk, or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.
- (n) “Kickapoo Tribe in Kansas General Council” means the general council of the Kickapoo Tribe in Kansas which is composed of the voting membership of the Tribe.
- (o) “Kickapoo Tribe in Kansas Reservation” means all lands which are within the exterior boundaries of the Kickapoo Reservation, which is recognized by the federal government as the Kickapoo Tribe in Kansas Reservation.
- (p) “Tribal Court” means the Kickapoo Tribe in Kansas Tribal Court.

ARTICLE III. POWERS OF ENFORCEMENT

- (1) Kickapoo Tribe in Kansas Tribal Council. In furtherance of this ordinance, the Tribal Council shall have the following powers and duties:

- (a) To publish and enforce rules and regulations adopted by the Tribal Council governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Kickapoo Tribe in Kansas Reservation;
- (b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its function. Such employees shall be tribal employees;
- (c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Kickapoo Tribe in Kansas Reservation;
- (d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;
- (e) To bring suit in the Tribal Court or other appropriate court to enforce this ordinance as necessary;
- (f) To determine and seek damages for violation of the ordinance;
- (g) To make such reports as may be required by the Kickapoo Tribe in Kansas Tribal Council; and
- (h) To collect taxes and fees levied or set by the Kickapoo Tribe in Kansas Tribal Council and to keep accurate records, books and accounts.

(2) **Limitation on Powers.** In the exercise of its powers and duties under this ordinance, the Tribal Council and its individual members shall not:

- (a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;
- (b) Waive the immunity of the Kickapoo Tribe in Kansas from suit without the express written consent and resolution of the Tribal Council.

(3) **Inspection Rights.** The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Tribal Council and this ordinance are being complied with.

ARTICLE IV. SALE OF LIQUOR

- (1) **License Required.** Sales of liquor and alcoholic beverages on Kickapoo Tribe in Kansas Reservation may only be made at businesses which hold a Kickapoo Tribe in Kansas Liquor license.
- (2) **Sales for Cash.** All liquor sales on the Kickapoo Tribe in Kansas Reservation shall be on a cash only and no credit shall extended to any person, organizations, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.
- (3) **Sale for Personal Consumption.** All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage on the Kickapoo Tribe in Kansas Reservation is prohibited. Any person who is not licensed pursuant to this ordinance who purchases any alcoholic beverage on the Kickapoo Tribe in Kansas Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Kickapoo Tribe in Kansas as set forth herein.
- (4) **Other Licenses.** In addition to or in lieu of the license otherwise provided by this ordinance, a retailer of alcoholic beverages may also be licensed under this ordinance to make sales of alcoholic beverages in the same manner (a) as allowed by Kansas law in the state of Kansas for similar Class A or B clubs or (b) as allowed by Kansas law outside of the Kickapoo Tribe in Kansas Reservation and in Brown County, Kansas. Under no circumstances will any retailer be required to comply with any state or county laws, rules or regulations which are inapplicable for any reason or which are preempted by or in violation of federal law.

ARTICLE V. LICENSING

- (1) **Procedure.** In order to control the proliferation and establishment on the Kickapoo Tribe in Kansas Reservation which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor on the Kickapoo Tribe in Kansas Reservation must apply to the Kickapoo Tribe in Kansas for a license to sell or serve liquor.

(2) **Application.** Any person or entity applying for a license to sell or serve liquor on the Kickapoo Tribe in Kansas Reservation must fill in the application provided for this purpose by the Kickapoo Tribe in Kansas and pay such application fee as may be set from time to time by the Tribal Council for this purpose. Said application must be filled out completely in order to be considered.

(3) **Issuance of License.** The Tribal Council may issue a license if it believes that such issuance is in the best interests of the Kickapoo Tribe in Kansas. The purpose of this ordinance is to permit liquor sales and consumption at the casino or casino-hotel facilities located on the Kickapoo Tribe in Kansas Reservation. Issuance of a license for any other purposes will not be considered to be in the best interest of the Kickapoo Tribe in Kansas.

(4) **Period of License.** Each license may be issued for a period not to exceed two (2) years from the date of issuance.

(5) **Renewal of License.** A license may renew its license if the licensee has complied in full with this ordinance provided however, that the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Kickapoo Tribe in Kansas.

(6) **Revocation in License.** The Tribal Council may suspend or revoke a license due to one or more violations of this ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(7) **Hearings.** Within 15 days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Tribal Council under this ordinance, the licensee may deliver to the Tribal Council a written request for hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Tribal Council and a written decision will be issued. Such decision will be considered final unless an appeal is filed

with the Tribal Court within 15 days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under this and any other sections of this ordinance shall be accord with due process of law.

(8) **Non-transferability of Licenses.** Licenses issued by the Tribal Council shall not be transferable and may not be utilized by the person or entity in whose name it was issued.

ARTICLE VI. TAXES

(1) **Sales Tax.** The Tribal Council shall have the authority, as may subsequently be specified under tribal law, to levy and to collect a tax on each retail sale of alcoholic beverage on the Kickapoo Tribe in Kansas Reservation. Based upon a percent of the retail sales price. All taxes from the sale of alcoholic beverages on the Kickapoo Tribe in Kansas Reservation shall be paid over to the General Treasury of the Kickapoo Tribe in Kansas.

(2) **Taxes Due.** All taxes for the sale of liquor and alcoholic beverages on the Kickapoo Tribe in Kansas Reservation are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) **Delinquent Taxes.** Past due taxes shall accrue interest at 2% per month.

(4) **Reports.** Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

(5) **Audit.** As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor and alcoholic beverages on the Kickapoo Tribe in Kansas Reservation. Said review or audit may be done periodically by the Tribe or through its agents or employees whenever, in the opinion of the Tribal Council, such a review or audit is necessary to verify the accuracy of reports.

ARTICLE VII. RULES, REGULAITONS AND ENFORCEMENT

- (1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.
- (2) Any person who shall in any manner sell or offer for sale or distribute or transport liquor in violation of this ordinance shall be subject to civil damages assessed by the Tribal Council.
- (3) Any person within the boundaries of the Kickapoo Tribe in Kansas Reservation who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.
- (4) Any person who keeps or possess liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.
- (5) Any person who knowingly sells liquor of a person under the influence of liquor shall be guilty of a violation of this ordinance.
- (6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person shall drink liquor in a public conveyance shall be guilty of a violation to this ordinance.
- (7) No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the of 21 to consume liquor on his premises or any premises under this control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.
- (8) Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.
- (9) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an

offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to over the age of 21 years shall be guilty of violating this ordinance.

(11) Any person guilty of violation of this ordinance shall be liable to pay the Kickapoo Tribe in Kansas the amount of \$500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

- (a) Driver's license or identification card issued by any state department of motor vehicles;
- (b) United States Active Duty Military;
- (c) Passport.

(13) Liquor which is possessed, including for sale, contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

(14) Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Kickapoo Tribe in Kansas.

ARTICLE VIII. ABATEMENT

(1) Any room, house building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture,

importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

(2) The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and per perpetually enjoin any nuisance declared under this article. In addition to other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond a sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines, costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Tribe under this ordinance.

(3) In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

ARTICLE IX. REVENUE

(1) Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Tribal Council for essential governmental and social services.

ARTICLE X. SEVERABILITY AND EFFECTIVE DATE

- (1) If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.
- (2) This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the Federal Register.
- (3) Any and all prior liquor control enactments of the Tribal Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

ARTICLE XI. AMENDMENT AND CONSTRUCTION

- (1) This ordinance may only be amended by a vote of the Tribal Council, the governing body of the Kickapoo Tribe in Kansas.
- (2) Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Kickapoo Tribe in Kansas or their tribal government.

[FR Doc. 2021-09196 Filed: 4/30/2021 8:45 am; Publication Date: 5/3/2021]